Court of Exchequer. Nov. 7 and 25, 1862.

WILKINSON *vs.* FAIRRIE AND ANOTHER.

Plaintiff, a carman, was sent by his employer to defendants' premises to receive certain goods, which were usually handed to him out of a room or door in a passage, and were then put into his cart. After waiting some time, and nobody coming to him, he inquired of the defendants' gatekeeper for the warehouseman. The gatekeeper directed him to enter at a certain door, and follow the passage in a certain direction, and he would then meet with the warehouseman. Plaintiff accordingly followed the direction given him, and in going along the passage, which was dark, he fell down through the well-hole of a staircase into an underground part of the premises. An action having been brought to recover compensation for the injury received by plaintiff from the fall, the plaintiff was nonsuited, and on a rule being moved for to set it aside, it was

Held, that the nonsuit was rightly directed, on the ground that if it was so dark that plaintiff could not see, he ought not to have proceeded without a light; and if it was sufficiently light for him to see, he might have avoided the staircase, which was a very different thing from a hole or a trapdoor down which a man might fall.

It was not the business of the owners of the premises to have the passage lighted, and there was no contract, or public or private duty on their part, that they should be in any other condition than they were.

Generally speaking, it is the duty of every person to take care of his own safety, so as not to go along a dark passage without the assistance of a light to tell him where he is going, and what the danger is that he is to expect.

This was an action to recover damages for an injury to the plaintiff from a fall caused by the alleged negligence of the defendants. The declaration stated that the defendants, before and at the time of the committing of the grievance, and of the occurring of the injury and damage herein mentioned, were lawfully possessed and in the occupation of a certain messuage, warehouse, and premises, wherein they carried on their business of sugar-bakers, and in which said warehouse there was a certain hole, or aperture, yet defendants, well knowing the premises, whilst they were so possessed and in the occupation of the said messuage, &c., and so carried on their business therein as aforesaid, and whilst there was such hole or aperture as aforesaid, wrongfully, and contrary to their duty in that behalf, permitted the said hole or aperture to be and continue, and the same was

then so badly, insufficiently, and defectively covered and protected, and the part of the said warehouse in which the said hole or aperture was situated was then so insufficiently and ineffectively lighted, that, by means of the premises, and for want of a proper and sufficient covering and protection, and a sufficient and effective light near or about the said hole or aperture, the plaintiff, who was then lawfully passing in and about the said warehouse, for the purpose of transacting certain lawful business with defendants in the way of their said trade, fell into the said hole or aperture, and thereby plaintiff was greatly damaged, &c.

Pleas:—1. Not guilty. 2. That plaintiff was not at the said time, when, &c., lawfully passing in and about the said warehouse, as alleged. 3. That it was not the duty of defendants to cover and protect the said hole or aperture, or to light that part of the warehouse near or about the said hole or aperture, as alleged.

At the trial before BRAMWELL, B., at Guildhall, at the sittings after Trinity Term last, the following facts appeared in evidence: —Plaintiff, a carman, was sent by his employer to the premises of the defendants, who were sugar refiners, with a delivery order for a tierce of sugar. On arriving there he presented his order to the gatekeeper, who directed him to take his wagon to a certain part of the premises and wait there till the sugar was delivered to him—which was, in fact, the usual course of proceeding; after waiting there upwards of half an hour, and no one coming to him, he returned to the gatekeeper, who then directed him to enter the warehouse at a door which he pointed out, and to turn to the left, and go upstairs, and there he would find the warehouseman in the counting-house. Plaintiff thereupon went in as directed, but finding the entrance very dark, he asked another man in the yard if he was going right, and was told that he was. He went on accordingly, and after going a few steps he fell through an opening in the floor, which was in fact the well-hole of a staircase to an underground part of the premises. Upon this state of facts appearing, the learned Judge directed a nonsuit, with stay of execution.

B. C. Robinson now moved for a rule to set aside the nonsuit, and for a new trial. [BRAMWELL, B.—The plaintiff was in this

dilemma: either there was no danger to a person keeping a proper lookout, or there was. If there was, he should not have gone on without obtaining a light, or applying to some one to guide him.] He was told by the gatekeeper to turn to the left, and to go upstairs. He did so, and found himself down the hole of the well-staircase. Even had plaintiff been a trespasser, the defendants' liability for an injury arising from such a hidden danger on their premises, was clear from the case. But here plaintiff was legitimately on the premises in the course of his necessary business, and though it was dark he would naturally suppose that he might safely pursue the course pointed out to him. [BRAMWELL, B.—It is impossible to say that plaintiff was not a contributory by his own negligence in walking in the dark.] The defendants should have had a light there, or have fenced the well-hole round. In the absence of evidence to the contrary, it must be taken that the plaintiff was pursuing the very course pointed out by the defendants. The direction of the gatekeeper was a sort of guarantee by defendants that there was no danger. [BRAMWELL, B.—Suppose the gatekeeper had said, "Shut your eyes, turn to the left, and walk on, it is quite safe;" would that have been sufficient to show an authority from the defendants?"] It was necessary for plaintiff to see the delivery porter, and defendants cannot be heard to say they will repudiate their gatekeeper's authority: a specific authority is not contended for, but as defendants should either have had their premises in a safe condition, or a person there to point out the danger, and as the gatekeeper was the only person there to give information, his direction must be taken as that of the defendants themselves. The leaving the counting-house open would seem almost to be an invitation on the defendants' part to persons to go there. *Cur. adv. vult.*

POLLOCK, C. B.—This was an application to set aside a nonsuit directed by my brother BRAMWELL. We think that there ought to be no rule. It was an action brought by the plaintiff against the owners of certain premises, in which the plaintiff had suffered a personal injury. He was a carman, who went with a cart for the purpose of receiving goods that usually were handed to him

out of a room or a door in a passage, and which were put into his cart; he went there late in the evening, and after waiting some time he went to inquire for the warehouseman; the porter told him the warehouseman was upstairs, and he gave him some direction as to going towards the place where he might meet with the warehouseman. His own account of the matter was, that he had got into a very dark passage, and going along that dark passage and seeing nothing, he turned to the right, or to the left, and, as he said, went down a hole; in point of fact he went down a staircase. The learned Judge, my brother BRAMWELL, directed a nonsuit, upon this sort of alternative; if it was so dark that he could not see, he ought not to have proceeded without a light; if it was sufficiently light that he could see, he might have avoided the staircase, which is a very different thing from a hole or a trap-door, down which a man may fall. My brother BRAMWELL directed a nonsuit, and I think the nonsuit was perfectly right. I am not aware what question could have been left. It certainly was not the business of the owners of the premises to have the passage lighted. It certainly is, generally speaking, the duty of every person to take care of his own safety, so as not to go along a dark passage without the assistance of some light to tell him where he is going, and what the danger is that he is to expect. There was no contract, and no public or private duty on the part of the owners of the premises that they should be in any other or different condition to that in which they were. It therefore seems to me that the nonsuit was perfectly right.

BRAMWELL and CHANNELL, Bs., concurred.

Rule refused.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF NEW YORK.[1]

Railroads—Duty of Company in respect to Construction—Right of Abandonment.—It seems that no positive obligation to *build* a railroad,

[1] From the Hon. O. L. Barbour, Reporter of the Court.